



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 763, and 764

RIN 0560-AI03

Farm Loan Programs Loan Making Activities

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending the Farm Loan Programs (FLP) loan making regulations to implement a new program and to amend existing regulations for direct and guaranteed loans as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). This rule establishes the loan making and servicing regulations for the new Land Contract (LC) Guarantee Program. The amendments change the farm experience requirements in the regulations for direct Farm Operating Loans (OL) and direct Farm Ownership Loans (FO), and make certain equine farmers and certain equine losses eligible for Emergency Loans (EM).

DATES: The rule is effective **[Insert date 30 days after publication in FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690-0155. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

## SUPPLEMENTARY INFORMATION

### Background

This final rule implements four provisions of the 2008 Farm Bill (Pub. L. 110-246) concerning loan making activities for FSA's direct and guaranteed loan programs. On September 23, 2010, FSA published the Farm Loan Programs Loan Making Activities proposed rule in the Federal Register (75 FR 57866-57880). This final rule addresses the comments received on the proposed rule. FSA received two written comments on the proposed rule. As discussed below, one comment addressed information contained in the Summary of Economic Impacts section of the proposed rule and the Cost Benefit Analysis accompanying the proposed rule. The other comment was a general statement regarding farm subsidies that is outside the scope of this rule and therefore this rule does not address it. The commenters were members of the general public.

The amendments in this rule were discussed as part of USDA's Joint Regional Consultation Strategy facilitated from November 2010 through January 2011. During these Joint Consultation Sessions, Tribal leaders from all Federally recognized Native American tribes and individual tribal members were given the opportunity to comment on forthcoming USDA rules. Comments received during these sessions are also addressed in this rule. The comments received during Tribal consultation involved eligibility of equine farmers and ranchers for EM loans.

This rule also makes clarifying changes to some of the provisions in the proposed rule. These changes are not in response to public comment, but are clarifications necessary to implement the program. These changes are largely technical in nature, such as correcting internal CFR references, and correcting inconsistent terminology.

## Land Contract Guarantee Program

This final rule implements the Land Contract Guarantee Program authorized in the 2008 Farm Bill (7 U.S.C. 1936). FSA believes that the Land Contract Guarantee Program will provide a valuable alternative for intergenerational transfers of farm real estate to help ensure the future viability of family farms. Eligibility for the Land Contract Guarantee Program will be limited to beginning farmers and socially disadvantaged farmers. In brief, a beginning farmer is defined in FLP regulations as someone who has not operated a farm for more than 10 years, does not own real farm property where aggregate acreage exceeds 30 percent of the median farm acreage of the farms in the county where the property is located, and will substantially participate in the operation of the farm. Socially disadvantaged applicants are members of a group whose members have been subject to racial, ethnic, or gender prejudice. See definitions of beginning farmer and socially disadvantaged group in 7 CFR 761.2. Eligibility for the Land Contract Guarantee Program will be limited to family farms, which are farms in which the majority of the labor and management decisions are provided by the farm family, and guarantees may only be used for financing the purchase of a farm on a new land contract. See FSA definitions for family farm, family member, and farm in 7 CFR 761.2.

This rule implements regulations for the Land Contract Guarantee Program in 7 CFR part 763. The Land Contract Guarantee Program will be consistent with other FSA Farm Loan Program regulations with regards to general applicant eligibility criteria and most loan servicing options. Eligibility criteria have also been established for the seller in this rule. The program requires the services of either a servicing agent or an

escrow agent. The program provides benefits to the seller to encourage intergenerational transfers of farm property. The Land Contract Guarantee Program gives the seller the option of choosing either a:

- (1) Prompt payment guarantee of three years' amortized annual installments plus the amount of three years' real estate taxes and hazard insurance premiums, or
- (2) Standard 90 percent guarantee of outstanding principal on the Land Contract.

The provisions in this rule for the Land Contract Guarantee Program are slightly different from those in the proposed rule. These minor technical changes are made to improve clarity of the regulations. There were no public or Tribal consultation comments specifically on the Land Contract Guarantee program, and no substantive changes are made from the provisions in the proposed rule. The clarifying and technical changes are included in the final rule are as described below.

- When stating the purpose of the Land Contract Program in § 763.1 in the proposed rule some of the wording was redundant and some of the terminology was inconsistent with § 761.2. The additional wording has been removed and the terminology has been corrected.
- An incorrect CFR reference was given in the seller eligibility requirements in § 763.5(a)(4) in the proposed rule with regards to compliance with federal requirements on debarment and suspension. The reference has been corrected.
- An incorrect reference was given in the buyer application requirements in § 763.5(b)(14) in the proposed rule with regards to debarment and suspension. The reference has been corrected.

- Inconsistent terminology was used in the buyer application requirements in § 763.7(b) in the proposed rule. The terminology has been changed to be consistent.
- An incorrect reference was given in the buyer application requirements in § 763.7(b)(3)(v) in the proposed rule. The reference has been corrected.
- Inconsistent terminology in § 763.10(a) in the proposed rule has been changed to be consistent.
- Redundant wording in § 763.11(a) in the proposed rule has been removed.
- Incorrect references and inconsistent terminology in § 763.19(b)(4) in the proposed rule have been corrected.
- The reference in “Appraisal method” under “Standard guarantee plan” as specified in “Delinquent servicing and collection” in § 763.20(b)(2)(ii)(B) was inadvertently omitted in the proposed rule. The reference has been added.
- The reference to the type of interest rate in “Establishment of Federal debt and Agency recovery of loss claim paid” in § 763.21(a)(1) in the proposed rule was specified incorrectly. It has been corrected.

#### Eligibility Change for Direct Farm Ownership and Farm Operating Loans

This rule amends the experience requirements for direct loan eligibility to consider all prior farming experience of the applicant. This amendment is required by sections 5001 and 5101 of the 2008 Farm Bill, which amended sections 302 and 311 of the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1922 and

1941). As specified in this rule, FSA requires that the broadened farm experience requirement be supplemented by on-the-job training or education that occurred within the last 5 years prior to the date of the application, if all prior farming occurred more than five years prior to application. FSA has considerable experience with providing supervised credit to farmers, and these broader eligibility requirements should ensure that applicants can be provided an enhanced opportunity to thrive in today's agribusiness industry.

We did not receive any public comments about the eligibility requirements in the proposed rule. The provisions for eligibility in this final rule are the same as in the proposed rule.

We did receive comments about the economic impact of the eligibility requirements, in public comments on the Cost Benefit Analysis (CBA). Essentially, the commenter stated that FSA had significantly underestimated the pool of applicants that would be made eligible for loans by these changes in requirements, because of the large pool of potential applicants who have recently graduated from agricultural colleges, or who have other relevant non-farm experience. FSA feels that our original estimates of impact are correct, as borrowers must also meet all other eligibility requirements, which have not changed. The same commenter also questioned the accuracy of the loan subsidy rate used in our analysis; we used the rate required by The Office of Management and Budget (OMB). No changes have been made based on these comments.

## Emergency Loans

FSA provides emergency loans to help farmers recover from production and physical losses due to drought, flooding, other natural disasters, and certain quarantines. As required by section 5201 of the 2008 Farm Bill, which amended section 321 of the CONACT (7 U.S.C. 1961), this rule expands EM eligibility to equine farmers whose primary enterprise is to breed, raise, and sell horses. For these farmers, losses will be treated the same as losses for other types of livestock operations, with minor differences in security requirements intended to accommodate the unique nature of the equine industry.

We received two comments during the Tribal consultation on the EM provisions in the proposed rule. The comments are presented briefly below, followed by FSA responses.

Comment: FSA should loosen up the policy so that all equine operations are eligible for loans.

Response: FSA does not believe every individual involved in any aspect of the equine industry should be considered farmers and, therefore, should be eligible for FSA loans. As required by section 5201 of the 2008 Farm Bill, FSA has revised the EM loan regulations to add eligibility for individuals and entities involved as equine farmers. FSA's definition of equine farmer only includes those in the business of breeding, raising and selling horses because Conference Report language (No. 110-627) on section 5201 clearly indicates Congress' intent to exempt losses associated with horses used for racing, showing, recreation, or pleasure and associated losses of income from eligibility under the EM program. The new equine EM provisions will allow FSA to provide loan

assistance to equine farmers to help minimize the effects of natural disasters on their operations. No change was made to the rule in response to this comment.

Comment: FSA should also make rodeo stock eligible for EM loan assistance.

Response: As written, this rule includes individuals and entities involved in the business of breeding, raising, and selling rodeo stock as eligible for EM loans. No change to the rule was made in response to this comment.

#### Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

OMB designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this rule.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C.



553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Thus, FSA has not prepared a regulatory flexibility analysis.

All FSA direct loan borrowers and all farm entities affected by this rule are small businesses according to U.S. Small Business Administration small business size standards. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all sizes of entities. The costs of compliance with this rule are expected to be minimal. No comments were received on the proposed rule regarding disparate impact on small entities. Therefore, FSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### Environmental Evaluation

The environmental aspects of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 – 4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR parts 799 and 1940, subpart G). The changes are non-discretionary, and, as such, no new significant circumstances or information relevant to environmental concerns have been established. In consideration of the previous analysis documented in the 2003 Programmatic Environmental Assessment (PEA) and the reasons outlined in the 2004 Finding of No Significant Impact (FONSI), FSA has concluded that this final rule will

not have a significant impact on the quality of the human environment either individually or cumulatively, and, therefore, is categorically excluded and not subject to an environmental assessment or environmental impact statement in accordance with 7 CFR 1940.310(e)(3). The Final PEA and a copy of the FONSI are available at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=enl-ea>.

#### Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V published in the Federal Register on June 24, 1983 (48 FR 29115), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform”. The provisions of this rule will have preemptive effect with respect to any State and local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. This rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, all administrative remedies in accordance with 7 CFR part 11 must be exhausted.

#### Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism”. The policies contained in this rule do not have any substantial direct effect on states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”. This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The Office of Tribal Relations has concluded that the policies contained in this rule do not have tribal implications that preempt Tribal law. This rule was included in the Joint Regional Consultation Strategy facilitated by USDA from November 2010 through January 2011. This strategy consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. The issues raised in Tribal consultation and the resulting changes are discussed above.

## Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (URMA) (Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objective of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

## Federal Assistance Programs

The title and number of the Federal assistance programs in Catalog of Federal Domestic Assistance to which this rule applies are:

10.099 - Conservation Loans

10.404 – Emergency Loans

10.406 – Farm Operating Loans

10.407 – Farm Ownership Loans

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), FSA has described the new information collection activities in the request for public comment in the proposed rule. No comments about the information collection were received from the public. The information collection reporting and recordkeeping requirements associated with this rulemaking have been approved by OMB. OMB control numbers for this rule are 0560-0233, 0560-0236, 0560-0237, 0560-0238, and 0560-0279.

## E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

## List of Subjects

### 7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

### 7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs-agriculture.

### 7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.

For the reasons discussed in the preamble, 7 CFR chapter VII is amended as follows:

## PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM

### ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Revise the part heading for 7 CFR part 761 to read as shown above.

3. Amend § 761.2 paragraph (b) by adding a definition, in alphabetical order, for

“Land Contract” to read as follows:

#### § 761.2 Abbreviations and definitions.

\* \* \* \* \*

(b) \* \* \*

Land contract is an installment contract executed between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

\* \* \* \* \*

4. Add part 763 to read as follows:

## PART 763—LAND CONTRACT GUARANTEE PROGRAM

Sec.

763.1 Introduction.

763.2 Abbreviations and definitions.

763.3 Full faith and credit.

763.4 Authorized land contract purpose.

763.5 Eligibility.

763.6 Limitations.

763.7 Application requirements.

763.8 Incomplete applications.

763.9 Processing complete applications.

763.10 Feasibility.

763.11 Maximum loss amount, guarantee period, and conditions.

763.12 Down payment, rates, terms and installments.

763.13 Fees.

- 763.14 Appraisals.
- 763.15 Taxes and insurance.
- 763.16 Environmental regulation compliance.
- 763.17 Approving application and executing guarantee.
- 763.18 General servicing responsibilities.
- 763.19 Contract modification.
- 763.20 Delinquent servicing and collecting on guarantee.
- 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.
- 763.22 Negligence and negligent servicing.
- 763.23 Terminating the guarantee.

Authority: 5 U.S.C. 501 and 7 U.S.C. 1989.

#### § 763.1 Introduction.

(a) Purpose. The Land Contract Guaranteed Program provides certain financial guarantees to the seller of a farm through a land contract sale to a beginning farmer or a socially disadvantaged farmer.

(b) Types of guarantee. The seller may request either of the following:

(1) The prompt payment guarantee plan. The Agency will guarantee an amount not to exceed three amortized annual installments plus an amount equal to the total cost of any related real estate taxes and insurance incurred during the period covered by the annual installment; or

(2) The standard guarantee plan. The Agency will guarantee an amount equal to 90 percent of the outstanding principal under the land contract.

(c) Guarantee period. The guarantee period is 10 years for either plan regardless of the term of the land contract.

#### § 763.2 Abbreviations and definitions.

Abbreviations and definitions for terms used in this part are in § 761.2 of this chapter.

#### § 763.3 Full faith and credit.

(a) The land contract guarantee constitutes an obligation supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by the seller, in which:

(1) The seller had actual knowledge of the fraud or misrepresentation at the time it because the seller, or

(2) The seller participated in or condoned the fraud or misrepresentation.

(b) Loss claims also may be reduced or denied to the extent that any negligence contributed to the loss under § 763.22.

#### § 763.4 Authorized land contract purpose.

The Agency will only guarantee the Contract installments, real estate taxes and insurance; or outstanding principal balance for an eligible seller of a family farm, through a land contract sale to an eligible beginning or socially disadvantaged farmer.

#### § 763.5 Eligibility.

(a) Seller eligibility requirements. The private seller, and each entity member in the case of an entity seller, must:

(1) Possess the legal capacity to enter into a legally binding agreement;

(2) Not have provided false or misleading documents or statements during past or present dealings with the Agency;

(3) Not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718; and

(4) Not be suspended or debarred under 2 CFR parts 180 and 417.

(b) Buyer eligibility requirements. The buyer must meet the following requirements to be eligible for the Land Contract Guarantee Program:



(1) Is a beginning farmer or socially disadvantaged farmer engaged primarily in farming in the United States after the guarantee is issued.

(2) Is the owner and operator of a family farm after the Contract is completed. In the case of an entity buyer:

(i) Each entity member's ownership interest may not exceed the amount specified in the family farm definition in § 761.2 of this chapter.

(ii) The entity members cannot themselves be entities.

(iii) The entity must be authorized to own and operate a farm in the State in which the farm is located.

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

(A) Operate the farm and

(B) Own the farm after the contract is completed;

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

(A) Operate the farm; and

(B) Own the farm, or the entity itself must own the farm after the contract is completed;

(3) Must have participated in the business operations of a farm or ranch for at least 3 years out of the last 10 years prior to the date the application is submitted.

(4) The buyer, and all entity members in the case of an entity, must not have caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Act by debt write-down or write-off;

compromise, adjustment, reduction, or charge off under the provisions of section 331 of the Act; discharge in bankruptcy; or through payment of a guaranteed loss claim on more than three occasions on or prior to April 4, 1996 or any occasion after April 4, 1996. If the debt forgiveness is resolved by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

(5) The buyer, and all entity members in the case of an entity, must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, when the guarantee is issued.

(6) The buyer, and all entity members in the case of an entity, may have no outstanding unpaid judgment awarded to the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

(7) The buyer, and all entity members in the case of an entity, must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(8) The buyer, and all entity members in the case of an entity, must possess the legal capacity to enter into a legally binding agreement.

(9) The buyer, and all entity members in the case of an entity, must not have provided false or misleading documents or statements during past or present dealings with the Agency.

(10) The buyer, and all entity members in the case of an entity, must not be ineligible as a result of a conviction for controlled substances according to 7 CFR part 718.

(11) The buyer, and all entity members in the case of an entity, must have an acceptable credit history demonstrated by satisfactory debt repayment.

(i) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(ii) Unacceptable credit history will not include:

(A) Isolated instances of late payments which do not represent a pattern and were clearly beyond their control; or

(B) Lack of credit history.

(12) The buyer is unable to enter into a contract unless the seller obtains an Agency guarantee to finance the purchase of the farm at reasonable rates and terms.

(13) The buyer, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR part 718.

(14) The buyer, and all entity members in the case of an entity, must not be suspended or debarred under 2 CFR parts 180 and 417.

#### § 763.6 Limitations.

(a) To qualify for a guarantee, the purchase price of the farm to be acquired through the land contract sale cannot exceed the lesser of:

(1) \$500,000 or

(2) The current market value of the property.

(b) A guarantee will not be issued if the appraised value of the farm is greater than \$500,000.

(c) Existing land contracts are not eligible for the Land Contract Guarantee Program.

(d) Guarantees may not be used to establish or support a non-eligible enterprise.

§ 763.7 Application requirements.

(a) Seller application requirements. A seller who contacts the Agency with interest in a guarantee under the Land Contract Guarantee Program will be sent the land contract letter of interest outlining specific program details. To formally request a guarantee on the proposed land contract, the seller, and each entity member in the case of an entity, must:

(1) Complete, sign, date, and return the land contract letter of interest to the Agency, and

(2) Provide the name, address, and telephone number of the chosen servicing or escrow agent.

(b) Buyer application requirements. A complete application from the buyer will include:

(1) The completed Agency application form;

(2) A current financial statement (not older than 90 days);

(3) If the buyer is an entity:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;

- (ii) A current personal financial statement for each member of the entity;
- (iii) A current financial statement for the entity itself;
- (iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (in good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the land contract guarantee and execute required debt, security, and other instruments and agreements; and
- (v) In the form of a married couple applying as a joint operation, items in paragraphs (b)(3)(i) and (b)(3)(iv) of this section will not be required. The Agency may request copies of the marriage license, prenuptial agreement, or similar documents as needed to verify loan eligibility and security. The information specified in paragraphs (b)(3)(ii) and (iii) of this section are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication;
- (4) A brief written description of the buyer's proposed operation;
- (5) A farm operating plan;
- (6) A brief written description of the buyer's farm training and experience;
- (7) Three years of income tax and other financial records acceptable to the Agency, unless the buyer has been farming less than 3 years;
- (8) Three years of farm production records, unless the buyer has been farming less than 3 years;
- (9) Verification of income and off-farm employment if relied upon for debt repayment;
- (10) Verification of all debts;

- (11) Payment of the credit report fee;
- (12) Documentation of compliance with the environmental regulations in part 1940, subpart G, of this title;
- (13) A copy of the proposed land contract; and
- (14) Any additional information deemed necessary by the Agency to effectively evaluate the applicant's eligibility and farm operating plan.

§ 763.8 Incomplete applications.

(a) Within 10 days of receipt of an incomplete application, the Agency will provide the seller and buyer written notice of any additional information that must be provided. The seller or buyer, as applicable, must provide the additional information within 20 calendar days of the date of the notice.

(b) If the additional information is not received, the Agency will provide written notice that the application will be withdrawn if the information is not received within 10 calendar days of the date of the second notice.

§ 763.9 Processing complete applications.

Applications will be approved or rejected and all parties notified in writing no later than 30 calendar days after application is considered complete.

§ 763.10 Feasibility.

(a) The buyer's proposed operation as described in a form acceptable to the Agency must represent the operating cycle for the farm operation and must project a feasible plan as defined in § 761.2(b) of this chapter.

(b) The projected income, expenses, and production estimates:

(1) Must be based on the buyer's last 3 years actual records of production and financial management unless the buyer has been farming less than 3 years;

(2) For those farming less than 3 years, a combination of any actual history and other reliable sources of information may be used. Sources must be documented and acceptable to the Agency; and

(3) May deviate from historical performance if deviations are the direct result of specific changes in the operation, reasonable, justified, documented, and acceptable to the Agency.

(c) Price forecasts used in the plan must be reasonable, documented, and acceptable to the Agency.

(d) The Agency will analyze the buyer's business ventures other than the farm operation to determine their soundness and contribution to the operation.

(e) When a feasible plan depends on income from sources other than from owned land, the income must be dependable and likely to continue.

(f) When the buyer's farm operating plan is developed in conjunction with a proposed or existing Agency direct loan, the two farm operating plans must be consistent.

§ 763.11 Maximum loss amount, guarantee period, and conditions.

(a) Maximum loss amount. The maximum loss amount due to nonpayment by the buyer covered by the guarantee is based on the type of guarantee initially selected by the seller as follows:

(1) The prompt payment guarantee will cover:

(i) Three amortized annual installments; or

(ii) An amount equal to three annual installments (including an amount equal to the total cost of any tax and insurance incurred during the period covered by the annual installments).

(2) The standard guarantee will cover an amount equal to 90 percent of the outstanding principal balance.

(b) Guarantee period. The period of the guarantee will be 10 years from the effective date of the guarantee unless terminated earlier under § 763.23.

(c) Conditions. The seller will select an escrow agent to service a Land Contract Agreement if selecting the prompt payment guarantee plan, and a servicing agent to service a Land Contract Agreement if selecting the standard guarantee plan.

(1) An escrow agent must provide the Agency evidence of being a bonded title insurance company, attorney, financial institution or fiscally responsible institution.

(2) A servicing agent must provide the Agency evidence of being a bonded commercial lending institution or similar entity, registered and authorized to provide escrow and collection services in the State in which the real estate is located.

§ 763.12 Down payment, rates, terms, and installments.

(a) Down payment. The buyer must provide a minimum down payment of five percent of the purchase price of the farm.

(b) Interest rate. The interest rate charged by the seller must be fixed at a rate not to exceed the Agency's direct FO loan interest rate in effect at the time the guarantee is issued, plus three percentage points. The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee.



(c) Land contract terms. The contract payments must be amortized for a minimum of 20 years and payments on the contract must be of equal amounts during the term of the guarantee.

(d) Balloon installments. Balloon payments are prohibited during the 10-year term of the guarantee.

#### § 763.13 Fees.

(a) Payment of fees. The seller and buyer will be responsible for payment of any expenses or fees necessary to process the Land Contract Agreement required by the State or County to ensure that proper title is vested in the seller including, but not limited to, attorney fees, recording costs, and notary fees.

(b) [Reserved]

#### § 763.14 Appraisals.

(a) Standard guarantee plan. For the standard guarantee plan, the value of real estate to be purchased will be established by an appraisal obtained at Agency expense and completed as specified in § 761.7 of this chapter. An appraisal is required prior to, or as a condition of, approval of the guarantee.

(b) Prompt payment guarantee plan. The Agency may, at its option and expense, obtain an appraisal to determine value of real estate to be purchased under the Prompt Payment Guarantee plan.

#### § 763.15 Taxes and insurance.

(a) The seller will ensure that taxes and insurance on the real estate are paid timely and will provide the evidence of payment to the escrow or servicing agent.

(b) The seller will maintain flood insurance, if available, if buildings are located in a special 100-year floodplain as defined by FEMA flood hazard area maps.

(c) The seller will report any insurance claim and use of proceeds to the escrow or servicing agent.

§ 763.16 Environmental regulation compliance.

(a) Environmental compliance requirements. The environmental requirements contained in part 799 and part 1940, subpart G, of this title must be met prior to approval of guarantee request.

(b) Determination. The Agency determination of whether an environmental problem exists will be based on:

- (1) The information supplied with the application;
- (2) Environmental resources available to the Agency including, but not limited to, documents, third parties, and government agencies;
- (3) Other information supplied by the buyer or seller upon Agency request; and
- (4) A visit to the farm.

§ 763.17 Approving application and executing guarantee.

(a) Approval is subject to the availability of funds, meeting the requirements in this part, and the participation of an approved escrow or servicing agent, as applicable.

(b) Upon approval of the guarantee, all parties (buyer, seller, escrow or servicing agent, and Agency official) will execute the Agency's guarantee agreement.

(c) The "Land Contract Agreement for Prompt Payment Guarantee" or the "Land Contract Agreement for Standard Guarantee" will describe the conditions of the

guarantee, outline the covenants and any agreements of the buyer, seller, escrow or servicing agent, and the Agency, and outline the process for payment of loss claims.

§ 763.18 General servicing responsibilities.

(a) For the prompt payment guarantee plan, the seller must use a third party escrow agent approved by the Agency. The escrow agent will:

- (1) Provide the Agency a copy of the recorded Land Contract;
- (2) Handle transactions relating to the Land Contract between the buyer and seller;
- (3) Receive Land Contract installment payments from the buyer and send them to the seller;
- (4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;
- (5) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;
- (6) Notify the Agency and the seller if the buyer defaults;
- (7) Service delinquent accounts as specified in § 763.20(a);
- (8) Make demand on the Agency to pay missed payments;
- (9) Send the seller any missed payment amount paid by the Agency under the guarantee;
- (10) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the Land Contract and the status of payment; and
- (11) Perform other duties as required by State law and as agreed to by the buyer and the seller;

(b) For the standard guarantee plan, the seller must use a third party servicing agent approved by the Agency. The servicing agent will:

- (1) Provide the Agency a copy of the recorded Land Contract;
- (2) Handle transactions relating to the Land Contract between the buyer and seller;
- (3) Receive Land Contract installment payments from the buyer and send them to the seller;
- (4) Provide evidence to the Agency that property taxes are paid and insurance is kept current on the security property;
- (5) Perform a physical inspection of the farm each year during the term of the guarantee, and provide an annual inspection report to the Agency;
- (6) Obtain from the buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform, and provide the Agency an analysis of the buyer's financial condition on an annual basis;
- (7) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the Land Contract and the status of payment;
- (8) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;
- (9) Notify the Agency and the seller if the buyer defaults;
- (10) Service delinquent accounts as specified in § 763.20(b); and
- (11) Perform other duties as required by State law and as agreed to by the buyer and the seller.

§ 763.19 Contract modification.

(a) The seller and buyer may modify the land contract to lower the interest rate and corresponding amortized payment amount without Agency approval.

(b) With prior written approval from the Agency, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. Such modifications may include but are not limited to:

(1) Deferral of installments,

(2) Leasing or subleasing, and

(3) Partial releases. All proceeds from a partial release or royalties from mineral extraction must be applied to a prior lien, if one exists, and in addition, the same amount must be credited to the principal balance of the land contract.

(4) Transfer and assumption. If the guarantee is to remain in effect, any transfer of the property and assumption of the guaranteed debt must be made to an eligible buyer for the Land Contract Guarantee Program as specified in § 763.5(b), and must be approved by the Agency in writing. If an eligible buyer for transfer and assumption cannot be found, the Deputy Administrator for Farm Loan Programs may make an exception to this requirement when in the Government's best financial interests.

(5) Assignment. The seller may not assign the contract to another party without written consent of the Agency.

(c) Any contract modifications other than those listed above must be approved by the Deputy Administrator for Farm Loan Programs, and will only be approved if such action is determined permissible by law and in the Government's best financial interests.

§ 763.20 Delinquent servicing and collecting on guarantee.

(a) Prompt payment guarantee plan. If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract or taxes or insurance when due, the escrow agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and send a copy of the demand letter to the Agency and to the seller; and

(2) Must make demand on the Agency within 90 days from the original payment, taxes, or insurance due date, for the missed payment in the event the buyer has not made the payment.

(b) Standard guarantee plan. If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract, then the seller has the option of either liquidating the real estate, or having the amount of the loss established by the Agency by an appraisal of the real estate. For either option, the servicing agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, and send a copy of the demand letter to the Agency and to the seller; and

(2) Must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the buyer does not make the payment within 60 days of the demand letter.

(i) Liquidation method. If the seller chooses the liquidation method, the servicing agent will:

(A) Submit a liquidation plan to the Agency within 120 days from the missed payment for approval prior to any liquidation action. The Agency may require and pay for an appraisal prior to approval of the liquidation plan.

(B) Complete liquidation within 12 months of the missed installment unless prevented by bankruptcy, redemption rights, or other legal action.

(C) Credit an amount equal to the sale price received in a liquidation of the security property, with no deduction for expenses, to the principal balance of the land contract.

(D) File a loss claim immediately after liquidation, which must include a complete loan ledger.

(E) Base the loss claim amount on the appraisal method if the property is reacquired by the seller, through liquidation.

(ii) Appraisal method. If the seller chooses to have the loss amount established by appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time.

(A) The only administrative appeal allowed under § 761.6 of this chapter related to the resulting appraisal amount will be a determination of whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant.

(B) The seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within 5 years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim

amount, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements, as specified in § 766.202(a)(1) – (3) of this chapter, made by the seller to the property in the time period from the loss claim to final disposition. If the property is not sold within 5 years from the date of the loss payment, the Agency will release the lien and the seller will have no further obligation to the Agency.

§ 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.

(a) Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt.

(1) Interest on the debt will be at the FLP non-program real property loan rate in effect at the time of the first Agency payment of a loss claim.

(2) The debt may be scheduled for repayment consistent with the buyer's repayment ability, not to exceed 7 years. Before any payment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets. This includes the buyer's ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by individual members of the entity, including their ownership interest in the real estate under contract.



(b) Annually, buyers with an Agency approved repayment plan under this section will supply the Agency a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition.

(c) If a buyer fails to make required payments to the Agency as specified in the approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in § 766.351(c) of this chapter.

§ 763.22 Negligence and negligent servicing.

(a) The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to:

(1) The escrow and servicing agent failing to seek payment of a missed installment from the buyer within the prescribed timeframe or otherwise does not enforce the terms of the land contract;

(2) Losing the collateral to a third party, such as a taxing authority, prior lien holder, etc;

(3) Not performing the duties and responsibilities required of the escrow or servicing agent;

(4) The seller's failure to disclose environmental issues; or

(5) Any other action in violation of the land contract or guarantee agreement that does not terminate the guarantee.

(b) [Reserved]

§ 763.23 Terminating the guarantee.

(a) The guarantee and the Agency's obligations will terminate at the earliest of the following circumstances:

(1) Full payment of the land contract;

(2) Agency payment to the seller of 3 annual installments plus property taxes and insurance, if applicable, under the prompt payment guarantee plan, if not repaid in full by the buyer. An Agency approved repayment plan will not constitute payment in full until such time as the entire amount due for the Agency approved repayment plan is paid in full;

(3) Payment of a loss claim through the standard guarantee plan;

(4) Sale of real estate without guarantee being properly assigned;

(5) The seller terminates the land contract for reasons other than monetary default; or

(6) If for any reason the land contract becomes null and void.

(b) If none of the events in paragraph (a) of this section occur, the guarantee will automatically expire, without notice, 10 years from the effective date of the guarantee.

PART 764 – DIRECT LOAN MAKING

5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

6. Amend § 764.51 by revising paragraph (b)(3) to read as follows:

§ 764.51 Loan application.

\* \* \* \* \*

(b) \* \* \*

(3) A written description of the applicant's farm training and experience, including each entity member who will be involved in managing or operating the farm. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, may be included in the applicant's written description. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability;

\* \* \* \* \*

7. Amend § 764.101 by revising paragraph (i)(3) to read as follows:

§ 764.101 General eligibility requirements.

\* \* \* \* \*

(i) \* \* \*

(3) Farming experience. For example, the applicant has been an owner, manager, or operator of a farm business for at least one entire production cycle. Farm experience of the applicant, without regard to any lapse of time between the farm experience and the new application, will be taken into consideration in determining loan eligibility. If farm experience occurred more than 5 years prior to the date of the new application, the applicant must demonstrate sufficient on-the-job training or education within the last 5 years to demonstrate managerial ability.

\* \* \* \* \*

8. Amend § 764.102 by revising paragraph (f) to read as follows:

§ 764.102 General limitations.

\* \* \* \* \*

(f) Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.

9. Amend § 764.352 by adding paragraph (l) to read as follows:

§ 764.352 Eligibility requirements.

\* \* \* \* \*

(l) Whose primary enterprise is to breed, raise, and sell horses may be eligible under this part.

10. Amend § 764.353 by adding paragraph (g) to read as follows:

§ 764.353 Limitations.

\* \* \* \* \*

(g) Losses associated with horses used for racing, showing, recreation, or pleasure or loss of income derived from racing, showing, recreation, boarding, or pleasure are not considered qualified losses under this section.

11. Amend § 764.355 by revising paragraph (b) to read as follows:

§ 764.355 Security requirements.

\* \* \* \* \*

(b) EM loans made as specified in § 764.351(a)(2) and (b) must generally comply with the general security requirements established in §§ 764.103, 764.104, and 764.255(b). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the

applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

- (1) Real estate,
- (2) Chattels and crops, other than horses,
- (3) Other assets owned by the applicant,
- (4) Third party pledges of property not owned by the applicant,
- (5) Repayment ability under paragraph (c) of this section.

\* \* \* \* \*

12. Amend paragraph § 764.356 by adding paragraph (c) to read as follows:

§ 764.356 Appraisal and valuation requirements.

\* \* \* \* \*

(c) In the case of an equine loss loan:

(1) The applicant's Federal income tax and business records will be the primary source of financial information. Sales receipts, invoices, or other official sales records will document the sales price of individual animals.

(2) If the applicant does not have 3 complete years of business records, the Agency will obtain the most reliable and reasonable information available from sources such as the Cooperative Extension Service, universities, and breed associations to document production for those years for which the applicant does not have a complete year of business records.

Signed on November 23, 2011.

Bruce Nelson,  
Administrator,  
Farm Service Agency.

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